H-189 (Jail) C.J.P.R./9-94

CF0000060382

Cr.A. 2350/97

02

APPEAL OF PRISONER

Division Bench (Criminal)

No दण्डित बंदी नम्बर 464/56 Name नारायण

Father's name ननकी दाऊ सतनामी

Residence मुकाम - सिधरा थाना मालखरौदा Age 30 वर्ष

Sentenced to जि० बिलासपुर (म०प्र०) on 27-9-97

Under Section धारा - 302 भा०दं०वि० आजीवन 25/- रु० वार्षिक by श्रीमान् अति० सत्र न्यायाधीश श्री बी० पी० सुमन (अधिक)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represent by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date on which copy received

3 Date on which Appeal sent 27-9-97

4 Whether the prisoner wishes to be represented or not हां/

No Name

Confined in दण्डित बंदी नं० 464/56 Jail नारायण पो० ननकीदाऊ बिलासपुर (म०प्र०)

No Dated 199

Forwarded to the रजिस्ट्रार मान्नीय उच्च-न्यायालय जबलपुर (म०प्र०)

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate अपील

जेल अधीक्षक जिला जेल बिलासपुर (म.प्र.)

Superintendent जेल बिलासपुर

W/1/WS

Date of receipt in Office

Date of receipt of record to accompany the Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

High Court of Madhya Pradesh JABALPUR Section 16 OCT 1997 Registration No. 693-A S. Thakur Receiving Clerk

Date of receipt in Appellate court

(P. T. O.)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.App.2350/97 **सन्** **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH -:

HON'BLE MR. L.C. BHADOO, Ag. C.J. &
HON'BLE MR. SUNIL KUMAR SINHA, J.

24.01.2007

Shri Abhay Tiwari, counsel for the appellant.

Shri D.K.Gwalre, Dy. Government Advocate for the State.

Heard.

Oral Judgment dictated on *dais*.

Per L.C. Bhadoo, Ag. C.J.

This appeal is directed against the judgment of conviction and order of sentence dated 27.9.1997, passed by the Additional Sessions Judge, Sakti, District-Bilaspur in Sessions Trial No. 09/1997, whereby, the learned Additional Sessions Judge, after holding the accused/appellant guilty for commission of offence under Section 302 of IPC for committing the murder of his wife-Teharin Bai, sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.250/-, in default of payment of fine to further undergo R.I. for 6 months.

The case of the prosecution, in brief, is that Nankidau (PW-1), father of the accused/appellant gave merg intimation (Ex.P/2) in Police Station-Malkharoda, on 24.11.1996 to the effect that today at about 6.00 a.m., his son-Narayan started beating his wife Teharin Bai as there was some quarrel between them in connection with cooking of meal. His son sat on the chest of

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मामला क्रमांक ....Cr.App.2350/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Teharin Bai and pressed her neck as also assaulted Teharin Bai with hands and fists. He tried to intervene, but his son ran after him also. On receiving this merg intimation, the S.H.O. Police Station registered a First Information Report (Ex.P/1) for commission of offence under Section 302 of IPC, left for scene of occurrence and after notice to the *Panchas*, prepared inquest (Ex.P/4) on the body of Teharin Bai. The site plan of place of occurrence (Ex.P/5) was prepared and body of Teharin Bai was sent for postmortem examination to the Public Health Centre, Malkharoda (Ex.P/16), where Dr. R.D.Gupta conducted the postmortem and opined that the cause of death was asphyxia due to throttling and injuries were antemortem in nature. The postmortem report was prepared (Ex.P/17).

After completion of the investigation, a charge sheet was filed against the accused in the Court of Judicial Magistrate First Class, Sakti, who in turn committed the case to the Session Judge, Bilaspur, from where, learned Additional Sessions Judge, Sakti received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 15 witnesses. The statement of accused was recorded under Section 313 of Cr.P.C., in which, he denied the material appearing against him and stated that he does not want to say anything.

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मामला क्रमांक Cri.App.2350/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned Additional Sessions Judge after hearing the counsel for respective parties and perusal of record convicted and sentenced the accused as aforementioned.

We have heard Shri Abhay Tiwari, learned counsel for the accused/appellant and Shri D.K.Gwalre, Deputy Government Advocate for the State and perused the record.

The homicidal death of Teharin Bai has not been disputed by learned counsel for the accused/appellant. Dr. R.D.Gupta (PW-10), has stated that on 25.11.1996 at about 11.00 a.m., he conducted postmortem on the body of Teharin Bai and he noticed as many as 20 injuries on various parts of her body. He stated that the deceased was carrying pregnancy and injuries were found on her neck also. He saw lacerated wounds on the right side. On mastoid bone there was a bruise on thyroid cartilage in the size of 2 ½" x ¾" brown in colour. There was a bruise on front side of the neck near thyroid cartilage in the size of 2 ½" x 3/4". There were 4 other bruises on the neck extending from mastoid muscles to cervical vertebra behind neck, 4 bruises on each side of the neck, 2 bruises on the front side of the neck and he opined that the death of Teharin Bai was caused on account of throttling; the report is Ex.P/7. Therefore, in view of the medical evidence of Dr. R.D.Gupta, death of Teharin Bai was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, eye-witnesses namely- Nankidau(PW-1),

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

father of accused, who lodged the report, Rambai(PW-3), mother of accused and Mangubai (PW-6) have turned hostile. Nankidau (PW-1), stated that he saw body of Teharin Bai in the house of the accused and called the villagers. On cross-examination in para 11, Nankidau stated that it is correct to say that his son-Narayan assaulted his wife-Teharin Bai with hands and fists, when he tried to intervene, his son ran after him, therefore, he ran away and informed Mangubai, Rambai and Bheshram. He further stated that it is correct to say that there were injuries on the neck, ears and eyes of Teharin Bai and blood was also there. But, in the cross-examination by the defence counsel, he has stated that he has not given police statement (Ex.P/6) and he has not lodged the report (Ex.P/1) and he affixed thumb on the report on the pressure of police. He has explained that Narayan, is his son, therefore, he is interested in release of his son at the earliest. At one place, he has stated that he saw the accused attacking the deceased, when he tried to intervene, the accused ran after him. As per the site plan- Ex.P/5, prepared by the Investigating Officer, dead body of Teharin Bai was lying in the room, where Teharin Bai and the accused used to reside. There were as many as 20 injuries on various parts of her body, mainly on nose, eyes, neck and face and as per the medical evidence, Teharin Bai died on account of throttling. This fact has not been disputed by counsel for the accused/appellant, but fact remains that Teharin Bai died homicidal death in the house of accused on account of injuries sustained by her. Even though his father has resiled, but later on

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

said that the accused/appellant assaulted his wife. In his statement under Section 313 Cr.P.C., he has not explained anything that how Teharin Bai sustained those injuries, where he was at the time of commission of offence because the accused and Teharin Bai used to reside in a room, where the dead body of Teharin Bai was found, therefore, under these circumstances, as per the Provisions of Section 106 of the Evidence Act, the accused was required to explain the circumstance, under which, Teharin Bai sustained homicidal injuries, which has not been explained by the accused, even he has not stated that where he was at the time of commission of offence, therefore, he has failed to discharge the burden which was on him under Section 106 of the Evidence Act. The main ingredients of the offence that Teharin Bai died homicidal death in the house of accused has been established by the prosecution, therefore, there was burden on the accused/appellant to explain that in what circumstances, Teharin Bai sustained those injuries. But, no explanation has been offered by him nor the defence has been able to bring on record in the cross-examination of the prosecution witnesses to show that the accused was not at his residence at the time of commission of crime or there was possibility of any other person to commit death of Teharin Bai.

On the foregoing reasons, we are of the considered opinion that conviction of the accused/appellant does not suffer from any infirmity or illegality.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the accused/appellant argued that looking to the nature of injuries that no hyoid bone or any other bone in the neck was fractured and no grievous injury on any other part of body of the deceased was found, therefore, an intention cannot be attributed to the accused/appellant that he attacked the deceased with an intention to cause her death. But we are not convinced with the arguments advanced by learned counsel for the accused/appellant for the reason that the Doctor has categorically stated that the death of Teharin Bai was on account of asphyxia as a result of throttling and the number of injuries or bruises on each side of the neck were noticed by the Doctor, when the accused throttled the deceased, she died spontaneously, therefore, the intention of the accused/ appellant was to cause death of his wife-Teharin Bai.

In the result, the appeal being devoid of merits is liable to be dismissed and it is hereby dismissed.

Sd/-
Acting Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

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